tion fix damages at any amount between the market value at the time of the conversion and the highest value before the trial. *Henderson* v. *Hollind*, 1 Ala. App. 400, 55 South. 323. There is much in favor of this rule; for the jury can so exercise their discretion as to prevent the defendant from reaping a profit by his wrongful act, and, at the same time, can by proper consideration of any peculiar circumstances so mitigate the damages as to work justice in every case. See SEDGWICK, DAMAGES, CHAPS. 11 and 12.

EVIDENCE—PRIVILEGED COMMUNICATIONS—HUSBAND AND WIFE.—The defendant wrote letters to his wife in which he admitted his guilt of a crime for which he was indicted. Later the letters came into the custody of third persons. On the defendant's trial the letters were offered as evidence against him. *Held*, the letters were not admissible. *McCormick* v. *State* (Tenn.), 186 S. W. 195. See NOTES, p. 306.

INSURANCE—CONDITIONS—PAROL WAIVER.—The agent of the defendant insurance company, who knew that the premises insured were lighted by gasoline, issued the plaintiff a policy which contained a condition that it should become void if gasoline were used on the premises. A loss having occurred, the plaintiff sued to recover on the policy, and the defendant pleaded the breach of this condition. *Held*, the plaintiff can recover, since the defendant's agent will be deemed to have waived the condition. *Marx* v. *Williamsburgh City Fire Ins. Co.* (Mich.), 158 N. W. 1052. For principles involved, see NOTES, p. 317.

INSURANCE—CONDITIONS—VACANCY OF PREMISES.—A tenant house was insured with a condition in the policy that it would be void if the house became "vacant or unoccupied." The tenant moved his family into another house; but three or four days later, when the house was burned, there still remained some household effects, and upon the premises some chickens, and the tenant still had possession of the key. *Held*, the house was not "vacant or unoccupied." *Covey* v. *Nat'l Union Fire Ins. Co.* (Cal.), 161 Pac. 35.

The weight of authority holds that when the insurance is taken out on a house occupied by a tenant, it is contemplated by the parties that there may be a temporary vacancy during the time required for the change of tenants, and, therefore, the policy is not vitiated thereby. *Roe* v. *Dwelling House Ins. Co.*, 149 Pa. St. 94, 23 Atl. 718, 34 Am. St. Rep. 595. See *Tracy* v. *Queen City Fire Ins. Co.*, 132 La. 610, 61 South. 687. The time allowed for the change of tenants is a reasonable time, considering all the surrounding circumstances. *Liverpool, etc., Ins. Co.* v. *Buckstaff*, 38 Neb. 146, 56 N. W. 695, 41 Am. St. Rep. 724. And see *American Central Ins. Co.* v. *Clarey*, 28 Ill. App. 195. It has been held, however, that the contract should be construed strictly, and hence that immediately upon removal of the tenant the policy becomes void. *Farmers' Ins. Co.* v. *Wells*, 42 Ohio St. 519; *Bennett* v. *Agricultural Ins. Co.*, 50 Conn. 420. Perhaps a majority of the cases hold, in accordance with the principal case, that the vacant or unoccupied clause does not

operate if the outgoing tenant has not moved out all of his goods, or if the incoming tenant is in the act of moving in. *Doud* v. *Citizens Ins. Co.*, 141 Pa. St. 47, 23 Am. St. Rep. 263; *Eddy* v. *Hawkeye Ins. Co.*, 70 Ia. 472, 30 N. W. 808, 59 Am. Rep. 444. *Contra, Richards* v. *Continental Ins. Co.*, 83 Mich. 508, 48 N. W. 350, 21 Am. St. Rep. 611. It has been held that the policy was suspended during the change of tenants, and if the time required was reasonable, then it was revived when a tenant moved in. See *Ridge* v. *Scottish Commercial Ins. Co.*, 9 Lea (Tenn.) 507; *Ætna Ins. Co.* v. *Meyers*, 63 Ind. 238; 1 VA. LAW REV. 493. A further distinction is sometimes made when a tenant moves out and the owner has no prospective tenant. In such case the building is held to be vacant. See *Snyder* v. *Fireman's Fund Ins. Co.*, 78 Ia. 146, 42 N. W. 630.

MARRIAGE—COMMON LAW MARRIAGE—CONTINUED COHABITATION AFTER REMOVAL OF IMPEDIMENT.—A man who had an undivorced wife still living went through a ceremonial marriage with another woman who knew nothing of his former marriage. They cohabited as man and wife for years, and continued to do so after the death of the first wife. *Held*, that after the death of the first wife, a valid common law marriage is presumed. *Smith* v. *Reed* (Ga.), 89 S. E. 815.

Where both parties know of the existence of an impediment at the time the relation began, then the cohabitation is meretricious and the cases are almost unanimous in holding that a new contract must be shown after the removal of the impediment. *Clark* v. *Barney*, 24 Okla. 455, 103 Pac. 598. In a case before the House of Lords, when there was no ceremonial marriage and the cohabitation was meretricious in its inception to the knowledge of both parties, nevertheless, a common law marriage was presumed after the removal of the impediment. *Campbell* v. *Campbell*, L. R. 1 Scotch & Div. App. Cas. 182. The holding is quite anomalous.

Where both parties desire marriage and both are ignorant of the existence of an impediment, the authorities all hold that a common law marriage takes place as soon as the impediment is removed. *Manning* v. *Spurch*, 199 Ill. 447, 65 N. E. 342; *Schuchart* v. *Schuchart*, 61 Kan. 597, 50 L. R. A. 180; *De Thoren* v. *Attorney General*, L. R. 1 App. Cas. 686.

When there is an impediment and one of the parties knows of it but conceals it from the other, the authorities are not in accord. *Rose* v. *Clark*, 8 Paige (N. Y.) 574; *Bull* v. *Bull*, 29 Tex. Civ. App. 364, 68 S. W. 727. *Hunt's Appeal*, 86 Pa. St. 294. A majority of the courts hold that if the parties continue to cohabit as man and wife after the removal of the impediment a valid common law marriage is to be presumed, for it is not to be supposed that they intended to live together unlawfully. *Donnelly* v. *Donnelly's Heirs*, 8 B. Mon. (Ky.) 113; *Bull* v. *Bull*, *supra*. The case under discussion falls within this class and the holding is in harmony with the above cases. Other courts take a different view and hold that a new contract must be shown after the removal of the impediment. *Cartwright* v. *McGown*, 121 Ill. 389, 12 N. E. 737, 2 Am. St. Rep. 105; *Hunt's Appeal*, *supra*. Cohabitation apparently matrimonial, subsequent to the removal of the impediment, only shows the carrying into effect of the original purpose, and when the original purpose of one of the par-